IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2895 OF 1992

T.N.Krishna Iyer .. Applicant
Versus
A.K.Baig, Asstt.Collector of
Central Excise & Ors. .. Respondents

WITH

CRIMINAL APPLICATION NO.2896 OF 1992

Yunus Ahmedbhai Hakimuddin .. Applicant
Versus
A.K.Baig, Asstt.Collector of
Central Excise & Ors. .. Respondents

Mr.Y.H.Muchhala, Senior Advocate with Ms.Hansa I. Advani, Mr.Sagheer A. Khan, Mr.Mahesh Patane i/b. Mr.A.A.Bhore for applicants
Mr.J.C.Satpute, for respondent No.1
Mr.R.Y.Mirza, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 14th December 2005.

ORAL JUDGEMENT:

. These applications under section 482 of

Cr.P.C. seek quashing of criminal case No.568 of 1982 pending on the file of learned Chief Judicial Magistrate, Thane. Since the complaint is common and submissions are identical, it would be convenient to dispose of these applications by a common judgement.

2. Criminal case No.568 of 1982 has been filed by the Assistant Collector of Central Excise (Preventive). He is first respondent to these applications. Said complaint is filed against the applicants as well as the company M/s.Asian Electronics Ltd. Averments in the complaint are that M/s.Asian Electronics carries on business of manufacture of electronic components viz., Carbon Film Resistors, Wire Wound Resistor and Capacitors falling under Tariff Item No.63 of Central Excise Tariff. On 8th May 1978, during the course of transit check on Eastern Express Highway Octroi post at Mulund officers of the Central Excise Thane came across

a vehicle bearing Registration No.BYL 3191. On enquiry it was found that the goods loaded in the vehicle were being transported from M/s.Asian Electronics Ltd. Thane. In the challan description of the goods is "Scrap Resistors" and 202 packets of this material was packed in cardboard boxes. Same were despatched to M/s.Nav Bharat Radio Agencies, Mumbai. In the octroi form name of consignee was shown as M/s.Jetking Electronics. Vehicle, therefore, was taken to factory and it was detained for investigation along with goods. It is stated in the complaint that at the relevant time lock out was declared in the factory and only security staff was attending the same. Seizure proceedings were, therefore, postponed. Ultimately, same were completed on 18th/19th September 1978. Each box came to be opened. It was found that the same was containing the goods in seal pack condition in small boxes. Markings on the said boxes were noted. It is contended that detailed inventory

of the goods packed in the said 202 cartoons reveal that there were 27,89,236 pieces of resistors valued at Rs.6,97,500/-. Panchanama was drawn. Goods were not found accompanying a valid Central Excise gate pass. Thus, it is evident that duty was not paid. Goods were handed over to the factory for safe custody under Supurtnama.

3. It is not necessary to go into other averments in the complaint, save and except stating that the complaint records in great details the version of each of the officer whose statements came to be recorded by the first respondent. As far as the Works Manager is concerned, his statement came to be recorded on 8th/9th May 1978. There is a subsequent statement recorded on 26th September 1978. It is primarily recorded that as Works Manager he points out that goods in the vehicle were cleared from pre-excise stock treated as scrap. He

deposes that such stock was of 1,50,15,697 pieces of electronic components falling under Tariff Item No.63 as on 2nd March 1976, out of which clearance of 79,84,049 pieces was made in the month of March 1976. Balance was taken for re-process. It is also deposed by him that challans were prepared with regard to subject consignment. The Assistant Works Manager had the authority to sign the said delivery challan. Statement of the Secretary who is applicant in other application is also referred to in this complaint, in details.

4. It is in these circumstances that the complaint proceeds to allege that when the scrap has been shown in the books as NIL, then what was removed from the factory was not a pre-existing stock of scrap but goods which are excisable and upon which duty levied under the Central Excise and Salt Act has to be remitted and paid. Since, such duty was not paid and the goods came to be

removed from the factory without payment thereof, offences punishable under section 9(1)(b), 9 (1)(bb) and 9(1)(bbb) of the Central Excise and Salt Act have been committed and these are punishable under the said enactment. The specific averment with regard to the role of applicants herein is that at the relevant time, they were Secretary and Works Manager. That their statement clearly shows that they have contravened the provisions of Rules viz., Central Excise Rules inasmuch as 202 cartoons containing 27,89,237 pieces of electronic resisters falling under Tariff Item No.68 valued as above were removed without determining central excise duty, prior to their removal. There is non-compliance with the mandate of making entries in the Personal Ledger Account (PLA) prior to their removal. They also contravened the sub-rules because the said goods were removed without cover of a valid central excise transport document which is form G.P.-I. Further, contravention of

the rules is pertaining to accounting of goods in the presceribed Central Excise Accounts viz., RG-I Register. Accused Nos. 2 and 3, who are applicants herein, have been, therefore, held responsible for evasion of central excise duty on the goods. It is further averred that they are in possession of and/or some way concerned in transporting, depositing, keeping or dealing with the goods which they know or had reason to believe are liable for confiscation under the Excise Rules. It is in these circumstances that the complaint which is filed on 1st December 1982 alleges commission of offences under the aforesaid provisions of the Excise Act.

5. It appears from the record that upon this complaint being filed, proceedings did go on before the concerned Magistrate. Averment in the applications is that the complaint came to be filed after a period of 4 and half years from the date of completion of investigation. Despite the

delay and lapse in filing the complaint, trial court on the date of filing of the same, issued process. Case was made returnabnle on 15th January 1983. Thereafter, copies of the complaint came to be forwarded to the applicants and proceedings came to be adjourned.

6. In the application it is specifically stated that between 19th February 1983 and 24th October 1985, the case was adjourned. However, examination in chief of P.W.1 was recorded. The statement of the present applicants came to be taken on record. Then there was a gap and once again proceedings resumed and this time P.W.2 was examined. Thereafter, depositions of P.W.3 came to be recorded on 30th July 1986.

7. It is contended that after evidence of witnesses as above, on several occasions complainant (first respondent herein) obtained orders for witness summons but did not bother to

serve them or keep witnesses present for further evidence before charge. Consequently, on several dates case had to be adjourned to enable first respondent to keep witnesses present. The trial court had also issued warrant to secure the presence of the company (M/s.Asian Electronics). It is contended that the warrant of arrest was not executed. Concerned police station did not submit report on each occasion. Fresh warrants were issued by the court but the presence of respondent No.2 could not be secured for a considerable period of time.

8. Ultimately, on or about 19th January 1991, Mr.D.J.Shah appeared on behalf of respondent No.2. He was released on bail. It is contended that 15 months time was taken to secure presence of respondent No.2 company. Upon his release on bail, Mr.Shah made an application for discharge. That application was granted by the trial Court by order dated 30th November 1991.

Case was adjourned on several occasions during the pendency of discharge application. Copy of the Roznama maintained from 1st December 1982 to 1st October 1992 is produced. It is thereafter pointed out that the head office of second respondent company was gutted in fire which destroyed the building in which it was located. On account of fire at Handloom house, the records have been destroyed and are not available. It is pointed out that the offence is committed on 8th May 1978. Investigations have been completed in October 1978. The complaint is filed on 1st December 1982. There is a delay of about 4 and half years.

9. In the meanwhile, there is a change in management. Applicants herein have ceased to be employees of second respondent company. They are, therefore, prejudiced inasmuch as the necessary records to support their pleas and defences are not available.

10. It is in these circumstances that the mandate of Article 21 of the Constitution of India is violated. There is no explanation for delay. Thus, the proceedings deserve to be quashed for breach of the mandate of Article 21 of the Constitution of India. The proceedings should also be quashed as against the applicants because no offence is disclosed in the complaint. It is pointed out that the offences alleged are under the Central Excise and Salt Act and more particularly section 9. The applicant in the first matter is the Works Manager whereas the applicant in the second matter is Secretary of the company. Merely stating that they are working as such would not be enough compliance with the mandate of aforesaid provisions of Central Excise and Salt Act. Specific case that accused are in charge of or responsible to the company for its business is necessary. In the absence of such averments, complaint does not

disclose any offence punishable under the abovementioned provisions of the Central Excise Act. This is an additional ground for quashing and setting aside the complaint and the orders continuing the proceedings.

11. Mr.Muchala, learned Senior Counsel appearing in support of this application invites my attention to the roznama recording the proceedings upto the date of filing of writ petition and contends that the incident in question has taken place on 8th May 1978. Complaint is filed as stated above after four and half years i.e. on 1st December 1982. He submits that the trial has not proceeded till the year 1992. Thus, 14 years have gone by from the date of incident and more than 10 years from the date of institution of complaint. For this delay, the applicants are not responsible. He submits that it is the first respondent complainant who is responsible for not attending the Court and not taking prompt steps in serving

the summons on the second respondent company. Further, he is responsible for the matter not progressing before the trial court. Mr.Muchala invites my attention to the fact that serious allegations are made regarding delaying the matter and, yet, no affidavit in reply is filed to these applications. It is, therefore, clear that the averments stand uncontroverted.

12. Mr.Muchala states that Right of Speedy Trial is part of right to life and liberty guaranteed by Article 21 of Constitution of India. It is the right of accused to be tried speedily and expeditiously. He invites my attention to the judgement of the Supreme Court in the case of Abdul Rehman Antulay and Ors. Vs. R.S.Nayak and Anr., reported in (1992) 1 S.C.C. 225. He then invites my attention to a Seven Judge decision of the Supreme Court in the case of Ramchandra Rao Vs. State of Karnataka, reported in (2002) 4 S.C.C. 578. Applying the

tests laid down in these decisions, according to Mr.Muchala there being no justification for the delay, the proceedings deserve to be quashed on this ground alone.

13. Even otherwise, according to Mr.Muchala, the complaint does not disclose commission of any offence by Secretary. No overt act is attributed to him. Mere reproduction of section and an averment that the applicant is Secretary or Works Manager of the second respondent company would not suffice. In any event, according to Mr.Muchala, applicants are not responsible for the delay. On account of supervening incident of fire and destruction of records, serious prejudice is caused to the applicants. For all these reasons, according to him, this Court should exercise its powers under section 482 of Cr.P.C. and quash and set aside the present proceedings.

14. In addition to the above decisions, Mr.Muchala, relies upon a decision of a Division Bench of Calcutta High Court in the case of Kedar Nath Goenka and Ors. Vs. Superintendent of Central Excise and Ors., reported in 1979 Cri.L.J. 421, and a decision of a learned Single Judge of this Court in the case of Garda Chemicals Pvt.Ltd. and Ors. Vs. R.Parthasarthy, Assistant Collector, Central Excise Kalyan and Anr., reported in 1984 (15) E.L.T. 18 (Bom).

15. On the other hand, Mr.Satpute appearing for respondent No.1 submits that applications are misconceived and should be dismissed. There is no case made out for quashing of the proceedings. He submits that the accused cannot demand as of right that the trial should be concluded speedily. Ultimately, according to him, the Supreme Court decisions have to be applied in the facts and circumstances of each case and

considering the offences alleged against accused. If the offence is an economic offence affecting entire Nation, then, it is not proper to quash proceedings merely because a long time has gone by from the date of institution of the same. Mr.Satpute points out that the offence in these cases is serious. Admittedly, complaint averment would show that what was being removed from the factory was not scrap material but dutiable and excisable goods. It is well settled that before such a removal, duty on the said goods has to be paid in accordance with rate prescribed on the item, under which the goods fall, in the Tariff Schedule. He states that duty was not paid and yet goods were cleared. In these circumstances, it is not a case where there is no offence disclosed.

16. He states that the delay is on account of the system. Judicial system being what it is, it is not open for the accused to apply for quashing

of proceedings, more so, when the prosecution has not delayed the matter. He states that stand taken is that second respondent did not represent the company. Management having changed, a fresh summons was directed to be issued against the second respondent company and this took some time. Thereafter, a discharge application was filed by representatives of new management and that also came to be disposed of. Time taken for all this is not on account of prosecution. In fact, he states that prosecution has been lodged expeditiously upon recording of the statements and compliance with other procedural matters. Perusal of the roznama would indicate that the accused was absent on several occasions. They are not arrested becauses offences are non-cognisable. Mr.Satpute was at pains in pointing out that in these circumstances, quashing is not permissible. In any event, the same is not the only alternative available. Ultimately, rights of both accused as well as

prosecution have to be balanced. More so, when the offences involved are economic offences. Therefore, this Court can issue appropriate directions for concluding the trial expeditiously. This must be the approach in such cases, after taking into account all factors in a balanced manner.

17. As far as second submission of Mr.Muchala is concerned, Mr.Satpute contends that liability of the applicants is very clear. It is not that a bald statement is made that they are officers of the company. On the other hand, the complaint would have to be read in the light of the statements recorded preceding the same. In the statements so recorded, based upon which allegations in the complaint are made, both Works Manager as well as Secretary have demonstrated that they were aware of the procedure under the Central Excise Act and Rules, that they were aware of the clearances, that they were aware of

the duties and obligations to be discharged under the Central Excise law. In these circumstances, by merely reading some paras of the complaint in isolation, it cannot be contended that it does not disclose any offence. All necessary averments are there in the complaint. He submits that no question of prejudice arises at all. As far as fire in the head office is concerned, he states that, that cannot be put forward as a ground of prejudice. More so, when the applicants have stated that the records were not maintained. Records are to be maintained at the factory. In any event fire took place in the year 1982. The incident and violation of the enactment was in 1978. For all these reasons, there is no substance in the plea of prejudice and the applications deserve to be dismissed.

18. In addition to relying upon the decisions cited by Mr.Muchala, Mr.Satpute invites my attention to three decisions (i) in the case of

Mangilal Vyas Vs. State of Rajasthan, reported in 1990 (Supp) S.C.C. 21 and (ii) Diwan Naubat Rai and Ors. Vs. State through Delhi Administration and Anr., reported in A.I.R. 1989 S.C. 542 and (iii) Commissioner of Central Excise Bombay Vs. Reliance Industries Ltd., reported in (2004) 7 S.C.C. 23.

19. With the assistance of Mr.Muchala and Mr.Satpute, I have perused the applications and annexures thereto. I have perused the complaint as well as Roznama, a copy of which was placed at my disposal. To me, it appears very clearly that the applicants cannot insist upon quashing of these proceedings because they have been protracted and delayed. Test of delay cannot be applied for quashing proceedings straightaway.

20. In a recent decision, in the case of Jagdish Ram Vs. State of Rajasthan and Anr., reported in A.I.R. 2004 S.C. 1734, the Supreme

Court has laid down that in exercise of powers under section 482 Cr.P.C. criminal proceedings cannot be quashed on account of delay. It is laid down that criminal proceedings do not deserve to be quashed merely on account of delay without anything more and without going into the reasons for delay. In considering the question where criminal proceedings deserve to be quashed on account of delay, the first question to be looked into is the reason for delay and also the seriousness of the offence. Regarding reasons for delay, it is held that if the applicant is responsible for the same, then inherent jurisdiction should not be exercised to quash the proceedings at his instance.

21. In the Constitution and Larger bench decision of the Supreme Court, brought to my notice by Mr.Muchala also same tests have been laid down. The guidelines very clearly state that right to speedy trial may be flowing from

Articler 21. It may be encompassing all stages but ultimately whether they should be quashed on the ground of delay itself or not depends upon several factors including the nature of the offences. The guidelines have been summed up by the Supreme Court in both desicions. For the present, reproduction of para 86 in the case of A.R.Antulay (supra) as also para 29 of the decision of Ramchandra Rao (supra) would clarify the entire matter.

> "86. In view of the above discussion, the following propositions emerge, meant to serve as guidelines. We must forewarn that these propositions are not exhaustive. It is difficult to foresee all situations. Nor is it possible to lay down any hard and fast rules. These propositions are:-
>
> 1) Fair, just and reasonable procedure implicit in Article 21 of the

Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the social interest also, does not make it any the less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.

2) Right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and re-trial. That is how, this Court has understood this right and there is no reason to take a restricted view.

3) The concerns underlying the right to speedy trial from the point of view of the accused are:

> a) *the period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;*
>
> *b) the worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and*
>
> *c) undue delay may well result in impairment of the*

ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise.

4) At the same time, one cannot ignore the fact that it is usually the accused who is interested in delaying the proceedings. As is often pointed out, "delay is known defence tactic". Since the burden of proving the guilt of the accused lies upon the prosecution, delay ordinarily prejudices the prosecution. Non-availability of witnesses, disappearance of evidence by lapse of time really work against the interest of the prosecution. Of course, there may be cases where the prosecution, for whatever reason, also delays the proceedings. Therefore, in every case, where the right to speedy trial is alleged to have been infringed, the first question to be put and answered is - who is responsible for the delay? Proceedings taken by either party in good faith, to vindicate their rights and interest, as perceived by them, cannot be treated as delaying tactics nor can the time taken in pursuing such proceedings be counted towards delay. It goes without saying that frivolous proceedings or proceedings taken merely for delaying the day of reckoning cannot be treated as proceedings taken in good faith. The mere fact that an application/ petition is admitted and an order of stay granted by a superior court is by itself no proof that the proceeding is not frivolous. Very often these stays are obtained on ex

parte representation.

5) While determining whether undue delay has occurred (resulting in violation of Right to Speedy Trial) one must have regard to all the attendant circumstances, including nature of offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions and so on - what is called, the systemic delays. It is true that it is the obligation of the State to ensure a speedy trial and State includes judiciary as well, but a realistic and practical approach should be adopted in such matters instead of a pedantic one.

6) Each and every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage. As has been observed by Powell, J. in Barker "*it cannot be said how long a delay is too long in a system where justice is supposed to be swift but deliberate.*". The same idea has been stated by White, J. in U.S. Vs. Ewell in the following words:-

> "...*the Sixth Amendment right to a speedy trial is necessarily relative, is consistent with delays, and has orderly expedition, rather than mere speed, as its essential ingredients; and whether delay in completing a prosecution amounts to an unconstitutional deprivation of rights depends upon all the circumstances.*"

. However, inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of accused will also be a relevant fact. The prosecution should not be allowed to become a persecution. But when does the prosecution become persecution, again depends upon the facts of a given case.

7) We cannot recognise or give effect to, what is called the "demand rule". An accused cannot try himself; he is tried by the Court at the behest of the prosecution. Hence, an accused's plea of denial of speedy trial cannot be defeated by saying that the accused did at no time demand a speedy trial. If in a given case, he did make such a demand and yet he was no tried speedily, it would be a plus point in his favour, but the mere non-asking for a speedy trial cannot be put against the accused. Even in USA, the relevance of demand rule has been substantially watered down in Barker and other succeeding cases.

8) Ultimately, the court has to balance and weigh the several relevant factors - "balancing test" or "balancing process" - and determine in each case whether the right to speedy trial has been denied in a given case.

9) Ordinarily speaking, where the Court comes to the conclusion that right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open. The nature of the offence and other

circumstances in a given case may be such that quashing of proceedings may not be in the interest of justice. In such a case, it is open to the Court to make such other appropriate order - including an order to conclude the trial within a fixed time where the trial is not concluded or reducing the sentence where the trial has concluded - as may be deemed just and equitable in the circumstances of the case.

10) It is neither advisable nor practicable to fix any time-limit for trial of offences. Any such rule is bound to be qualified one. Such rule cannot also be evolved merely to shift the burden of proving justification on to the shoulders of the prosecution. In every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the Court to weigh all the circumstances of a given case before pronouncing upon the complaint. The Supreme Court of USA too has repeatedly refused to fix any such outer time-limit in spite of the Sixth Amendment. Nor do we think that not fixing any such outer limit ineffectuates the guarantee of right to speedy trial.

11) An objection based on denial of right to speedy trial and for relief on that account, should first be addressed to the High Court. Even if the High Court entertains such a plea, ordinarily it should not stay the proceedings, except in a case of grave and exceptional nature. Such proceedings in High Court

must, however, be disposed of on a priority basis."

"29. For all the foregoing reasons, we are of the opinion that in Common Cause case (I), (as modified in Common Cause (II), and Raj Deo Sharma (I) and (II) the Court could not have prescribed periods of limitation beyond which the trial of a criminal case or a criminal proceeding cannot continue and must mandatorily be closed followed by an order acquitting or discharging the accused. In conclusion we hold:-

(1) The dictum in A.R.Antulay case is correct and still holds the field.

(2) The propositions emerging from Article 21 of the Constitution and expounding the right to speedy trial laid down as guidelines in A.R.Antulay case adequately take care of right to speedy trial. We uphold and

reaffirm the said propositions.

(3) The guidelines laid down in A.R.Antulay case are not exhaustive but only illustrative. They are not intended to operate as hard and fast rules or to be applied like a straitjacket formula. Their applicability would depend on the fact situation of each case. It is difficult to foresee all situations and no generalisation can be made.

(4) It is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings. The time-limits or bars of limitation prescribed in the several directions made in Common Cause (I), Raj Deo Sharma (I) and Raj Deo Sharma (II) could not have been so prescribed or drawn and are not good law. The criminal courts are not obliged to terminate trial or criminal proceedings merely on account of lapse of time, as prescribed by the directions made in Common Cause case (I), Raj Deo Sharma case (I) and (II). At the most the periods of time prescribed in those decisions can be taken by the courts seized of the trial or proceedings to act as reminders when they may be persuaded to apply their judicial mind to the facts and circumstances of the

case before them and determine by taking into consideration the several relevant factors as pointed out in A.R.Antulay case and decide whether the trial or proceedings have become so inordinately delayed as to be called oppressive and unwarranted. Such time-limits cannot and will not by themselves be treated by any court as a bar to further continuance of the trial or proceedings and as mandatorily obliging the Court to terminate the same and acquit or discharge the accused.

(5) The criminal courts should exercise their available powers, such as those under Sections 309, 311 and 258 of the Code of Criminal Procedure to effectuate the right to speedy trial. A watchful and diligent trial Judge can prove to be a better prosecutor of such right than any guidelines. In appropriate cases, jurisdiction of the High Court under Section 482 Cr.P.C. and Articles 226 and 227 of the Constitution can be invoked seeking appropriate relief or suitable directions.

(6) This is an appropriate occasion to remind the Union of India and the State Governments of their constitutional obligation to strengthen the judiciary - quantitatively and qualitatively - by providing

> requisite funds, manpower and infrastructure. We hope and trust that the Governments shall act.

We answer the questions posed in the orders of reference dated 19/9/2000 and 24/6/2001 in the abovesaid terms."

22. Applying the aforesaid tests to the facts and circumstances of the present case, it does appear to me that the proceedings cannot be quashed for violation of the mandate of Article 21 and more particularly right of speedy trial assured therein. The roznama of the present case has been perused by me. It is not as if the prosecution has done nothing. Upon the complaint being filed, the matter proceeded. After the disposal of applications for enlargement on bail by the accused concluded some time in the year 1983, thereafter, Evidence proceeded. Statements of witnesses have admittedly been recorded.

Complainant had remained present. Recording of statements commenced from 1985. Deposition of prosecution witnesses was completed. On several occasions, the witnesses were present. The accused remained absent. On occasions non bailable warrant had to be issued. (2nd September 1986). Sometime, the Court was on leave. Partly, the pleas raised by the applicants about their ceasing to be employees of the company and, therefore, not in a position to represent the company, also accounted for the delay. Thereupon, second respondent company had to be served afresh. Upon service being complete the representatives appeared and applied for being discharged from the proceedings. That application was considered and granted. That they appeared in the year 1991 and discharged at the end of year 1991 is not disputed before me. It is, therefore, clear that the prosecution is not responsible for delaying the proceedings as is sought to be alleged.

23. The delay in filing of the complaint has not been placed in the forefront while urging that the right of speedy trial is violated. The submissions proceed on the basis that from the date of the filing of the complaint till the date of filing of applications under section 482 Cr.P.C., ten years have gone by and no substantial progress is made. It is in these circumstances that the applications have been filed.

24. For the reasons recorded above, applying the test laid down in the aforesaid decisions, it is not possible to agree with Mr.Muchala that the right of speedy trial has been violated in the facts and circumstances of the present case. The Roznama indicates that the prosecution was serious in proceeding with the case. Witnesses attended, their depositions came to be recorded. It is not a case where complete lethargy and

inaction on the part of the prosecution is the reason for delay. On the other hand, it appears to me that partly because of the criminal justice delivery system and partly because of the defence taken that the matter has been delayed. As observed by the Supreme Court in aforesaid judgements, it is usually the accused who is interested in delaying proceedings as delay is known defence tactic. More so, in economic offences and accused are on bail. In these circumstances, it is not possible to quash the proceedings on the ground that considerable time has gone by from the institution thereof. In coming to this conclusion, I have also noted the seriousness of the offence. It is an economic offence. Violation of Central Excise Laws and Rules is the basis of the charge. When Evasion of Tax and duty is involved, it is not permissible to apply the mandate of Article 21 enshrining speedy trial in a mechanical manner. This is not a case which can be termed as

adversory with which only parties are concerned. It involves a question with which society and economy of nation is also concerned. Therefore, contentions of Mr.Muchala on this aspect are rejected.

25. Equally untenable is his next submission that complaint does not disclose any offence as far as applicants herein. It is not as if description of applicants has not been given. It is not as if the nomenclature of the applicants as officer or works manager is the only averment in the complaint. Complaint proceeds on the basis that as Works Manager and Secretary, the applicants were responsible to and in charge of the affairs/ business of the second respondent. In this behalf, it is material to note that the averments specifically refer to the statement of the Works Manager as well as of the Secretary. If the complaint is perused in the light of this statement, it is not a case where there is a mere

reference to the section or reperoduction of language thereof. Acts of omission and commission on the part of officers concerned have been referred to. It is, therefore, contended that the accused including the company are responsible for the evasion of central excise duty. In doing so, they have violated and breached provisions contained in the Act and the Rules. They are responsible for non compliance with several procedural and other aspects set out in the rules. In the complaint it is averred as under:-

> "*... from the investigations carried by the Central Excise authorities, it has been ascertained and as aforesaid that accused Nos. 2 and 3 who were and are the Secretary and Works Manager of the said firm of M/s.Asian Electronics Ltd. have evaded payment of Central Excise duty on the said 27,89,237 pieces of*

Electronics Resistors by not accounting them in central excise records ....".

If the complaint is perused, with other material, it is clear that in the Act of disposing of excisable goods as scrap without payment of central excise duty, the company as also the Secretary and Works Manager are involved. From a reading of these materials, it is not possible to agree with Mr.Muchala that power under section 482 of Cr.P.C. should be exercised in this case to quash the proceedings as the same does not disclose commission of any offence on the part of the applicants.

26. The decisions relied upon by Mr.Muchala are obviously distinguishable. They were rendered in the peculiar fact and circumstance brought to the notice of the Division Bench of Calcutta High Court and the learned single Judge

of this Court. Before the Calcutta High Court, essential averments were lacking in the complaint. It is upon a finding that there was no averment that Directors of the company were guilty of any specific act of commission or omission which would tantamount to an offence, that, they could not be prosecuted under section 9(1), 9(c) and therefore, the prosecution against them was not permitted to be continued. There the complaint was perused. There, in the absence of the averments about the specific acts of commission and ommissions it was held that the complaint discloses no offence.

27. Similar is the case, in the matter before the learned Single Judge of this Court. There, after reproducing Rule 221 of the Central Excise Rules and on that basis not absolving the Managing Director, the learned single Judge proceeded to absolve and exonerate the administrative officer and works manager of the

company, because there were no averments in the complaint to indicate as to how they are concerned with the payment of excise duty and removal of goods from the premises of the company. It is in these circumstances, that in para 8 of the decision in Garda Chemicals that the learned Judge came to a conclusion that no case was made out for issuing process against them.

28. Learned Single Judge noted the Division Bench decision of the Calcutta High Court and distinguished it partially on facts. If para 8 of the decision of the learned Single Judge is perused and the test laid down therein is applied to the present case, then, it is clear that there are sufficient averments to indicate that both applicants are concerned with demand of duty and removal of the goods from the premises of company. It is not that because they are works manager and secretary that they have been arrayed

as accused.

29. Submission of Mr.Muchala about prejudice need not detain me at all. As far as prejudice is concerned, it is not for this Court to quash proceedings merely because the accused come forward with a plea that necessary documents and records are not traceable or not available in their office. They cannot, by merely relying upon this, contend that they would be prejudiced completely. It is for them to establish at the trial that such documents and records as are relevant ought to be made available so as to enable them to effectively and properly defend themselves. That aspect can have no bearing on the request to quash proceedings.

30. In the result, there is much substance in the contention of Mr.Satpute appearing for prosecution that this is not a fit case for exercise of inherent jurisdiction of this Court

and quash the proceedings in question. However, it is not as if no directions can be issued by this Court to expedite the process. Indeed, that should be the approach as ultimately, all such powers are to render justice. Therefore, the Trial Court should conclude the proceedings as expeditiously as possible and in any event by 30th June 2006. This direction would meet the ends of justice.

31. Accordingly, Rule in each of the applications stands discharged. Interim order is vacated.

(S.C.DHARMADHIKARI, J)